

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SIMMONS BANK, §
§
Plaintiff, §
§
vs. § CIVIL ACTION NO. 4:24-CV-01191
§
CINCH ENERGY SERVICES, L.L.C., §
MARK LOPEZ AND FRANK THOMAS §
SHUMATE, JR., §
§
Defendants. §

PLAINTIFF SIMMONS BANK'S RULE 26(a)(1) DISCLOSURES

Pursuant to Rule 26(a)(1)(A) of the Federal Rules of Civil Procedure and the parties' Joint Discovery/Case Management Plan, Plaintiff Simmons Bank ("Simmons") serves the following Initial Disclosures upon Defendants Cinch Energy Services, L.L.C. ("Cinch"), Frank Thomas Shumate, Jr. ("Shumate"), and Mark Lopez ("Lopez") (collectively, the "Defendants").

INITIAL DISCLOSURES

26(a)(1)(A)(i): The name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

RESPONSE:

1. Amy Moore
c/o Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
(214) 745-5400

Representative of Simmons with knowledge regarding the loan (the "Loan") governed by the Loan Agreement dated December 9, 2020, by and between Cinch, as Borrower, and Simmons' predecessor by merger, as Lender, and containing a Ratification by Obligated Parties, signed by

Lopez and Shumate as Guarantors (the “Loan Agreement”)¹, Simmons’ security interests in the Collateral described in the Security Agreement and lien against the real property owned by Cinch and located at 5821 Agnes Street, Corpus Christi, Texas 78406 (the “Cinch Property”), the Loan Documents including the Security Agreement, the Deed of Trust for the Cinch Property (the “Deed of Trust”), the guaranties signed by Shumate and Lopez, Simmons’ attempts to inspect and appraise the Collateral located at various properties (the “Inspections”) and which pieces of the Collateral were located there at the time (together with the Cinch Property, the “Properties”), the Appraisal Report prepared by WFA Collateral Review Services and dated October 26, 2020 (the “Initial List”), the 2023 Cinch Depreciation Schedule V020923 given to Simmons and Rosen Systems on February 5, 2024, (the “Report”), the Appraisal of Machinery and Equipment prepared by Rosen Systems, Inc. and dated February 27, 2024 (the “Rosen Appraisal”), Defendants’ numerous defaults under the Loan Agreement, Guaranties, and other Loan Documents (the “Defaults”), Simmons’ acceleration of the Loan (the “Acceleration”), the amounts due and owing under the Loan, and the claims and defenses asserted in this lawsuit, and related subjects.

2. Kent Fry
15929 Punta Bonaire Drive
Corpus Christi, Texas 78418
(361) 354-0280

Former representative of Simmons with knowledge regarding the Loan, the Loan Agreement, Security Agreement, Deed of Trust, and other Loan Documents, the Cinch Property, and the Acceleration, and the claims and defenses asserted in this lawsuit, and related subjects.

¹ Capitalized terms used in these Disclosures not defined herein shall have the meaning assigned to such terms in the Loan Agreement.

3. Robert Baker
c/o Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
(214) 745-5400

Representative of Simmons with knowledge regarding the Loan, the Loan Agreement, Security Agreement, Deed of Trust, and other Loan Documents, the Cinch Property, the Inspections, the Initial List, the Report, the Rosen Appraisal, the Defaults, the Acceleration, and the claims and defenses asserted in this lawsuit, and related subjects.

4. Josh Pryor
9613 Royal Oak Dr.
Corpus Christi, Texas 78410
(361) 947-1542

Former representative of Simmons with knowledge regarding the Loan, the Loan Agreement, Security Agreement, Deed of Trust, and other Loan Documents, the Cinch Property, and the claims and defenses asserted in this lawsuit, and related subjects.

5. John D. Wittenberg, Jr.
Jackson Walker LLP
1900 Broadway, Suite 1200
San Antonio, Texas 78215
(210) 978-7725

Mr. Wittenberg is an attorney for Simmons who has knowledge regarding the Loan Documents, the Defaults, the default correspondences sent on behalf of Simmons, the Acceleration, the amount and reasonableness of the attorneys' fees incurred by Simmons with Jackson Walker LLP in connection with the efforts by Simmons to collect the Loan.

6. Brian T. Morris
Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
(214) 745-5400

Mr. Morris has knowledge regarding the amount and reasonableness of the attorneys' fees incurred by Simmons in connection with the claims asserted by Simmons and this proceeding.

7. Frank Thomas Shumate, Jr.
2200 County Road 413
Falls City, Texas 78113

Mr. Shumate is a Defendant, a guarantor of the Loan and a representative of Cinch, and Mr. Shumate has knowledge regarding the Loan, the Loan Agreement, Security Agreement, Deed of Trust, and other Loan Documents, the Properties, the Inspections, the Initial List, the Report, the Rosen Appraisal, the Defaults, the Acceleration, and the claims and defenses asserted in this lawsuit, and related subjects.

8. Mark Lopez
52 County Road 3011
Edna, Texas 77957

Mr. Lopez is a Defendant, a guarantor of the Loan and a former representative of Cinch, and Mr. Lopez has knowledge regarding the Loan, the Loan Agreement, Security Agreement, Deed of Trust, and other Loan Documents, the Properties, the Initial List, the Defaults, the Acceleration, and the claims and defenses asserted in this lawsuit, and related subjects.

9. Timothy Pollard
5821 Agnes Street
Christi, Texas 78406

Representative of Cinch with knowledge regarding the Loan, the Loan Agreement, Security Agreement, Deed of Trust, and other Loan Documents, the Properties, the Inspections,

the Initial List, the Report, the Rosen Appraisal, the Defaults, the Acceleration, and the claims and defenses asserted in this lawsuit, and related subjects.

10. Martin Kroesche
5821 Agnes Street
Christi, Texas 78406

Independent Contractor of Cinch with knowledge regarding the Loan, the Loan Agreement, Security Agreement, Deed of Trust, and other Loan Documents, the Properties, the Inspections, the Initial List, the Report, the Rosen Appraisal, the Defaults, the Acceleration, the Collateral, and the claims and defenses asserted in this lawsuit, and related subjects.

11. Loretta Higgins
5821 Agnes Street
Christi, Texas 78406

Representative of Cinch with knowledge regarding the Loan, the Loan Agreement, Security Agreement, Deed of Trust, and other Loan Documents, the Properties, the Inspections, the Initial List, the Report, the Rosen Appraisal, the Defaults, the Acceleration, the Collateral, and the claims and defenses asserted in this lawsuit, and related subjects.

12. Stacy Thomas
(Address is unknown)

Representative of Cinch with knowledge regarding the Loan, the Loan Agreement, Security Agreement, Deed of Trust, and other Loan Documents, the Properties, the Inspections, the Initial List, the Report, the Rosen Appraisal, the Defaults, the Acceleration, the Collateral, and the claims and defenses asserted in this lawsuit, and related subjects.

13. Michael Mendieta
4768 FM 624
Robstown, Texas 78380
(361) 271-6826

Former representative of Cinch with knowledge regarding the Loan, the Loan Agreement, Security Agreement, Deed of Trust, and other Loan Documents, the Properties, the Initial List, the Collateral, and the claims and defenses asserted in this lawsuit, and related subjects.

14. Arielle Mendieta
4768 FM 624
Robstown, Texas 78380

Former representative of Cinch with knowledge regarding the Loan, the Loan Agreement, Security Agreement, Deed of Trust, and other Loan Documents, the Properties, the Initial List, the Collateral, and the claims and defenses asserted in this lawsuit, and related subjects.

15. Justin Sprencel
4083 Emil Street
Robstown, Texas 78380
(361) 771-5986

Former representative of Cinch with knowledge regarding the Loan, the Loan Agreement, Security Agreement, Deed of Trust, and other Loan Documents, the Properties, the Initial List, the Report, the Collateral, and the claims and defenses asserted in this lawsuit, and related subjects.

16. Elite Real Estate Holdings, Ltd.
1806 S. County Road 1101
Midland, Texas 79706

Representatives of Landlord with knowledge regarding the Midland Property, the Collateral located thereon, Simmons' attempts to inspect the Collateral located at the Midland Property, and related subjects.

17. David A. Dalfonso, CEA
Rosen Systems Inc.
2323 Langford Street
Dallas, Texas 75208-2122
(800) 527-5134

Representative of Rosen Systems, Inc. with knowledge regarding portions of the Collateral, the Inspections, the Report, the Rosen Appraisal, and related subjects.

18. WFA Collateral Review Services, Inc.
13231 Champion Forest Dr., Ste. 400
Houston, Texas 77069
(713) 895-9238

Company that prepared Initial List and that has knowledge of Collateral, and related subjects.

26(a)(1)(A)(ii): A copy—or description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

RESPONSE: Simmons possesses copies of the Loan Documents, the payment history for the Loan, communications between Simmons and Defendants, including default correspondence, the Report, the Rosen Appraisal, the Initial List and redacted attorneys' fees statements, and Simmons will use such documents to support Simmons' claims in this lawsuit.

26(a)(1)(A)(iii): A computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Rule 34 the documents and other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

RESPONSE: Simmons is seeking from Cinch, as borrower, and Shumate and Lopez, as guarantors, jointly and severally, all damages resulting from Cinch's breach of the Loan Agreement and Shumate's and Lopez's breaches of their respective guaranty agreements equal to the unpaid amounts due and owing under the Loan. Specifically, after allowing all just and lawful offsets, payments and credits, there is due and owing under the Note, as of September 20, 2024, the outstanding principal balance of \$21,078,818.44, accrued but unpaid interest in the amount of

\$2,674,242.98, unpaid late charges in the amount of \$38,330.37, and interest continues to accrue on the outstanding principal balance at the current per diem rate of \$7,747.91787. Simmons also seeks to recover its costs, attorneys' fees and expenses, and pre-judgment and post-judgment interest at the maximum lawful rate.

26(a)(1)(A)(iv): For inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

RESPONSE: None.

Respectfully submitted,

WINSTEAD PC

By: /s/ Brian T. Morris
Brian T. Morris
Southern District No. 24372
State Bar No. 14469600
bmorris@winstead.com
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
(214) 745-5400 / (214) 745-5390 – FAX

**ATTORNEY-IN-CHARGE FOR
PLAINTIFF SIMMONS BANK**

OF COUNSEL FOR SIMMONS BANK:

WINSTEAD PC
Nicholas T. Stevens
Southern District No. 3792367
State Bar No. 24125422
nstevens@winstead.com
JPMorgan Chase Tower
600 Travis Street, Suite 5200
Houston, Texas 77002-2900
(713) 650-2600 / (713) 650-2400 – FAX

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2024, I electronically served the foregoing document using the CM/ECF system, which will send notification of such service via electronic mail to all counsel of record:

Paul W. O'Finan
paul@smcesq.com
THE LAW OFFICES OF SHANN M. CHAUDHRY, ESQ.
14100 San Pedro Avenue, #210
San Antonio, Texas 78232
**ATTORNEYS FOR DEFENDANTS CINCH
ENERGY SERVICES, L.L.C. AND FRANK
THOMAS SHUMATE, JR.**

Charles A. Newton
chuck@chucknewton.new
NEWTONS LAW
190 N. Millport Circle
The Woodlands, Texas 77382
**ATTORNEY FOR DEFENDANT
MARK LOPEZ**

/s/ Brian T. Morris

Brian T. Morris